



U.S. Citizenship
and Immigration
Services

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FILE:

LIN 02 219 50682

Office: NEBRASKA SERVICE CENTER

Date:

JAN 28 2004

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. §1254

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Cindy M. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director determined that the applicant failed to provide conclusive evidence of his nationality and evidence to establish that he had continuously resided in the United States since February 13, 2001 and been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant previously submitted proof of his identity and evidence of his residence in the United States. She states that the applicant did not enter the United States until August 2001 and he, therefore, cannot establish residence since February 2001. Counsel asserts that the applicant is still eligible for TPS because he came to the United States prior to November 2002. Counsel states that the applicant was ordered to apply for TPS by an immigration judge. Counsel submits a copy of an Order of the Immigration Judge, Executive Office for Immigration Review, issued on July 3, 2002.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the Federal Register, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;

- (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for repatriation; or
 - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of condition described in paragraph (f)(2) of this section.

Continuously physically present means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

Continuously resided means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security (the Secretary), with validity until March 9, 2005, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by the director. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

On August 22, 2002, the applicant was provided the opportunity to submit: (1) a copy of his birth certificate or passport; (2) a photo identification document; (3) evidence of date of entry into the United States prior to February 13, 2001; (4) evidence of continuous residence in the United States since February 13, 2001; and (5) evidence of physical presence in the United States since March 9, 2001. In response, the applicant submitted: a copy of his national identify document; an envelope addressed to him in the United States and postmarked August 20, 2002, a money transfer receipt dated January 22, 2002; two money transfer receipts on which the dates of issue are not legible; and one money transfer receipt dated June 1, 1997. The director determined the applicant had not provided conclusive evidence of nationality and that he had not established that he had

entered the United States prior to February 13, 2001 and had continuously resided since February 13, 2001 and been physically present since March 9, 2001. On December 1, 2002, the director denied the application for TPS.

On appeal, counsel states that the applicant has submitted proof of identity and evidence of residence in the United States. She maintains that although the applicant did not enter the United States until August 2001, he is, nevertheless, eligible for TPS. She also states that the applicant was ordered by an immigration judge to submit an application for TPS. However, all TPS applicants must meet the date of entry, continuous residence, and physical presence criteria. According to evidence in the record, including the applicant's own statements on the Form I-821 application and on appeal, the applicant did not enter the United States until August 12, 2001. Therefore, he could not have met the requirements of continuous residence in the United States since February 13, 2001 and continuous physical presence since March 9, 2001. Further, the judge's order only allowed the applicant's hearing to be administratively closed; with only a hand-written notation of "TPS" included. This allows the applicant the opportunity to file for TPS, but he or she must still meet all other applicable provisions of the statute and the regulations.

The applicant has not submitted sufficient evidence to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.